IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.710 OF 1994

Morarji Hariram & Ors. .. Petitioners.
Vs.
Shri Kedarnath Basudeo & Ors. .. Respondents.

Shri Ambar Joshi or the petitioners.
Shri P.N.Karlekar for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 31ST AUGUST, 2006

ORAL ORDER:

. Heard learned counsel for the petitioners and the respondents.

2. This writ petition is directed against the judgment and order dated 15.12.1993 by which interim notice No.4094/1993 in R.A.E.Suit No.524/1970 was made absolute. That notice was taken out by the defendant under Order VI Rule 17 seeking amendment of the written statement. By way of amendment the defendant has raised additional defences which had remained to be mentioned by the previous advocate who had drafted the written statement. It appears that by way of amendment the defendant has stated his positive case against the petitioner-plaintiff. That amendment was objected on two grounds. Firstly, on the ground that

there was delay in filing the application, and secondly, on the ground that the proposed amendment withdraws the admissions given by the defendant in favour of the petitioner-plaintiff. The learned Judge while allowing the application in paragraphs 6 and 7 has observed that the proposed amendment does not amount to withdrawal of any of the admissions given by the defendant in his original written statement.

3. Mr.Joshi, learned counsel for the petitioners invited my attention to the schedule of the amendment to contend that the defendant has withdrawn the admissions given in favour of the plaintiff and if it is allowed it would change the nature of the defence and/or has introduced totally different case by way of an amendment and that would cause prejudice to the plaintiff. On the other hand Mr.Karlekar, learned counsel for the respondents submitted that in the original written statement, the defendant had merely denied the statements made by the plaintiffs in the plaint and there was no positive case stated in the written statement. He further submitted that the defendant has not withdrawn any admission as alleged by the plaintiffs. The learned Judge after considering the original written statement as well as the schedule of amendment has recorded a categoric finding that by the said amendment the defendant has

not withdrawn any admissions given in favour of the plaintiffs in the original written statement. Looking to the overall facts and circumstances of the case and perusal of all the relevant documents, in my opinion, the order impugned is just and proper and the conclusions arrived at by the trial Court are correct and need no interference. Moreover, Mr.Karlekar, learned counsel for the respondent submits that he has instructions to make the statement that the plaintiff has not withdrawn any admissions from the original written statement by way of amendment and the plaintiff reaffirms the statements made in the original written statement. Mr.Joshi, submitted that the statement made by Mr.Karlekar may be recorded and accepted. The statement of Mr.Karlekar is accepted. In view thereof in my opinion, nothing further survives in the writ petition since that was only apprehension expressed by the petitioner-plaintiff. In the circumstances I see not reason to interfere with the order impugned in the present writ petition. Rule is, accordingly, disposed of with no orders as to costs.

(D.B.Bhosale, J.)